

HOUSE BILL No. 1404

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-4; IC 6-1.1-39.

Synopsis: Criteria for industrial development programs. Provides that in deciding whether to award a loan from the industrial development fund, the department of commerce (department) and the state board of finance may not: (1) require evidence of preliminary commitments to initiate or complete any part of the program; or (2) base their decision on the presence or lack of such evidence. Requires the department, in awarding grants from the industrial development grant fund, to use the same standards used for loans from the industrial development fund. Provides that grants may be awarded for the construction or extension of utilities or public infrastructure to improve the chance of securing future commitments to collaborate on an industrial development program. Provides that if a unit adopts an ordinance after June 30, 2004, to create an economic development district, a qualified industrial development project proposed for the district is not required to be supported by preliminary commitments to initiate or complete the project. Provides that the department, in determining whether to grant a preliminary certification authorizing the creation of the district, may not base its determination on the likelihood that the proposed project will be initiated and accomplished. Removes obsolete references to the corporation for innovation development.

Effective: July 1, 2004.

Thomas, Grubb

January 20, 2004, read first time and referred to Committee on Ways and Means.

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Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1404

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-4-8-1, AS AMENDED BY P.L.254-2003,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2004]: Sec. 1. As used in this chapter:

4 "Department" means the department of commerce.

5 "Enterprise zone" means an enterprise zone created under
6 IC 4-4-6.1.

7 "Governing body" means the legislative body of a city, town, or
8 county, an economic development commission, or any board
9 administering the affairs of a special taxing district.

10 "Industrial development program" means any program designed to
11 aid the growth of industry in Indiana and includes:

12 (1) the construction of airports, airport facilities, and tourist
13 attractions;

14 (2) the construction, extension, or completion of sewerlines,
15 waterlines, streets, sidewalks, bridges, roads, highways, public
16 ways, and information and high technology infrastructure (as
17 defined in this section);



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(3) the leasing or purchase of property, both real and personal;
and

(4) the preparation of surveys, plans, and specifications for the
construction of publicly owned and operated facilities, utilities,
and services.

"Information and high technology infrastructure" includes, but is not
limited to, fiber optic cable and other infrastructure that supports high
technology growth and the purchase and installation of such fiber optic
cable and other infrastructure.

"Minority enterprise small business investment company" means an
investment company licensed under 15 U.S.C. 681(D).

"Qualified entity" means a city, town, county, economic
development commission, or special taxing district.

"Small business investment company" means an investment
company licensed under 15 U.S.C. 691 et seq.

~~"State corporation" means the state corporation organized under
IC 6-3-1-5-7 (before its repeal) and IC 6-3-1-5-8 (before its repeal):~~

SECTION 2. IC 4-4-8-2 IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2004]: Sec. 2. (a) The general assembly finds
that:

(1) areas in Indiana have insufficient employment opportunities
and insufficient diversification of industry;

(2) these conditions are harmful to the health, prosperity,
economic stability, and general welfare of these areas and, if not
remedied, will be detrimental to the development of these areas;
and

(3) the use of money under this chapter and the fostering of
industrial development programs serves a public purpose.

(b) There is created a fund to be known as the industrial
development fund from which fund loans may be made to qualified
entities **and** small business investment companies ~~and the state
corporation~~ in accordance with this chapter and the rules adopted under
it. The administrative control of the fund and the responsibility for the
administration of this chapter are vested jointly in the state board of
finance and the department. The department, subject to the approval of
the state board of finance, may adopt rules for the proper
administration of the fund and this chapter. The department, subject to
the approval of the state budget agency, may employ personnel as
necessary for the efficient administration of this chapter.

SECTION 3. IC 4-4-8-3 IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2004]: Sec. 3. (a) There is appropriated to the
industrial development fund from the general fund of the state two

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million dollars (\$2,000,000). This sum does not revert to the general fund but constitutes a revolving fund to be used exclusively for the purpose of this chapter. The department, subject to the approval of the state board of finance, may order the auditor of state to make any approved loan from the revolving fund to any qualified entity (including the purchase of bonds of the qualified entity), any small business investment company, **or a minority enterprise small business investment company.** ~~or the state corporation.~~

(b) A qualified entity may borrow funds from the department under this chapter and shall use the loan proceeds for the purpose of instituting and administering any approved industrial development program. The combined amount of any such outstanding loans to any one (1) program may not exceed one million dollars (\$1,000,000). However, the one million dollar (\$1,000,000) restriction in this subsection does not apply to an approved industrial development program in an economic development district established by a qualified entity under IC 6-1.1-39. A loan made under this chapter to an economic development commission is not a loan to or an obligation of the qualified entity that formed the commission, if the repayment of the loan is limited to a specified revenue source under section 8 of this chapter.

(c) A small business investment company **or a minority enterprise small business investment company** ~~or the state corporation~~ may use the loan proceeds for any lawful purpose.

(d) Notwithstanding any other law (including IC 5-1-11) the loan to a qualified entity under this section may be directly negotiated with the department without public sale of bonds or other evidences of indebtedness of the qualified entity.

SECTION 4. IC 4-4-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) The state board of finance and the department shall authorize the making of a loan to any qualified entity under this chapter only when all of the following conditions exist:

(1) An application for the loan has been submitted by the qualified entity, in a verified petition, to the state board of finance and the department in such manner and form as the state board of finance and the department direct, setting forth therein:

(A) the need for the program and the need for funds for instituting and administering the program;

(B) an engineering estimate of the cost of the proposed program acceptable to the state board of finance and the department;

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(C) the amount of money needed; and

(D) such other information as is requested by the state board of finance and the department.

(2) The proposed program has been approved by the state board of finance and the department, which they may do only if they have determined that the program is based upon sound engineering principles and is in the interest of industrial development. **In deciding whether to approve a program submitted for approval after June 30, 2004, the state board of finance and the department may not:**

(A) require the qualified entity to provide evidence of preliminary commitments that:

(i) are made by business enterprises, associations, state or federal governmental units, or similar entities; and

(ii) demonstrate a reasonable likelihood that any project or construction proposed as part of the program will be initiated and accomplished; or

(B) base the decision on whether to approve the program on the presence or lack of any evidence described in clause (A).

(3) The loan does not exceed one hundred percent (100%) of the cost to the qualified entity of any approved program, the cost of the program to be based upon an estimate made by a competent engineering authority and approved by the department.

(4) The qualified entity has agreed to furnish assurance, satisfactory to the state board of finance and the department, that it will operate and maintain the program, after completion, in a satisfactory manner.

(b) The state board of finance and the department shall authorize the making of a loan to any small business investment company ~~or the state corporation~~ under this chapter only if:

(1) the small business investment company ~~or minority enterprise small business investment company or the state corporation~~ has loaned to or invested in a business located in an enterprise zone for a purpose directly related to the enterprise zone an amount that is at least twice the amount of the requested loan; and

(2) the small business investment company ~~or state corporation~~ has submitted an application, before the beginning of the phase out period of the enterprise zone, to the state board of finance and the department that shows the amount of the loan requested and any other information that is requested by the state board of finance and the department.

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SECTION 5. IC 4-4-8-7 IS AMENDED TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2004]: Sec. 7. The state board of finance and the department shall determine and ascribe to any applicant for a loan a priority rating, which rating shall be based primarily on the need of the qualified entity for any such proposed program or on the need of the small business investment company **or** minority enterprise small business investment company ~~or state corporation~~ for the loan as such need is related to the needs of other applicants for loans. The qualified entities, small business investment companies, **or** minority enterprise small business investment ~~company or state corporation~~ **companies** having the highest priority rating shall be given first consideration in making loans under this chapter, which loans shall be made in descending order as shown by the priority ratings.

SECTION 6. IC 4-4-8-10 IS AMENDED TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) If a qualified entity fails to make repayment of money lent under this chapter or is in any way indebted to the fund for any amounts incurred or accrued, the amount payable may be:

- (1) withheld by the auditor of state as set forth in the loan agreement with the qualified entity from any money payable to the qualified entity and transferred to the fund; or
- (2) recovered in an action by the state on relation of the department, prosecuted by the attorney general, in the circuit or superior court of the county in which the qualified entity is located.

(b) If ~~the state corporation or~~ a small business investment corporation or a minority enterprise small business investment company fails to make repayment of money lent under this chapter or is in any way indebted to the fund for any amounts incurred or accrued, the amount payable may be recovered in an action by the state on relation of the department, prosecuted by the attorney general, in the circuit or superior court of the county in which the ~~state corporation or~~ small business investment corporation or a minority enterprise small business investment company is located.

SECTION 7. IC 4-4-12-3 IS AMENDED TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2004]: Sec. 3. **(a)** Money in the industrial development grant fund does not revert to the general fund, but must be used exclusively for the purposes of this chapter. The treasurer of state shall invest monies not needed currently to meet the obligations of the program in the same manner as other public funds may be invested. Interest which accrues from these investments shall be credited to the industrial development grant fund. The director, subject

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to the approval of the governor and state budget director, may direct the auditor of state to make any approved grant from the fund to any eligible entity. The money granted must be used by the recipient for the purpose of **any of the following**:

(1) Instituting and administering any approved industrial development program.

(2) **For grants awarded after June 30, 2004, undertaking any of the following activities in order to improve the likelihood of securing future commitments by business enterprises, associations, state or federal governmental units, or similar entities to collaborate with the recipient in an industrial development program:**

(A) **The construction, extension, or completion of:**

(i) **sanitary sewerlines, storm sewers, and other related drainage facilities;**

(ii) **waterlines;**

(iii) **roads and streets;**

(iv) **sidewalks;**

(v) **rail spurs and sidings; and**

(vi) **information and high technology infrastructure (as defined in IC 4-4-8-1).**

(B) **The preparation of surveys, plans, and specifications for the construction of publicly owned and operated facilities, utilities, and services.**

(b) In approving a program under subsection (a)(1) for purposes of this chapter, the department shall use the same standards set forth in IC 4-4-8-5(2) for the approval of programs for loans from the industrial development fund under IC 4-4-8.

SECTION 8. IC 6-1.1-39-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) If the fiscal body of a unit finds that:

(1) in order to promote opportunities for the gainful employment of its citizens, the attraction of a new business enterprise to the unit, the retention or expansion of a business enterprise existing within the boundaries of the unit, or the preservation or enhancement of the tax base of the unit, an area under the fiscal body's jurisdiction should be declared an economic development district;

(2) the public health and welfare of the unit will be benefited by designating the area as an economic development district; and

(3) there has been proposed a qualified industrial development project to be located in the economic development district, with

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the proposal supported by:

(A) financial and economic data; and

(B) **except as provided in subsection (c)**, preliminary commitments by business enterprises, associations, state or federal governmental units, or similar entities that evidence a reasonable likelihood that the proposed qualified industrial development project will be initiated and accomplished;

the fiscal body may, before January 1, 2006, adopt an ordinance declaring the area to be an economic development district and declaring that the public health and welfare of the unit will be benefited by the designation.

(b) For the purpose of adopting an ordinance under subsection (a), it is sufficient to describe the boundaries of the area by its location in relation to public ways or streams or otherwise as determined by the fiscal body.

(c) If a unit adopts an ordinance under subsection (a) after June 30, 2004, the unit is not required to make the finding described in subsection (a)(3)(B).

SECTION 9. IC 6-1.1-39-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2.5. (a) Within thirty (30) days after the adoption of the ordinance under section 2 of this chapter, the fiscal body shall file with the department of commerce:

(1) a copy of the ordinance;

(2) a description of the proposed industrial development program and qualified industrial development project; and

(3) other additional data and information that will enable the department of commerce to determine preliminarily whether the unit may qualify for a loan from the industrial development fund established under IC 4-4-8.

(b) The department shall review the data and related information submitted under subsection (a) to determine preliminarily whether:

(1) the proposed project will qualify as a qualified industrial development project;

(2) for a project described in an ordinance adopted by a unit under section 2 of this chapter before July 1, 2004, there is a reasonable likelihood that the proposed qualified industrial development project will be initiated and accomplished; and

(3) there is a reasonable likelihood that an application by the unit under IC 4-4-8-5 for a loan from the industrial development fund to institute and administer the proposed industrial development program will be approved by the department and the state board of finance.

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(c) If the department preliminarily determines under subsection (b) that the proposed project does not or will not qualify as a qualified industrial development project or that there is not a reasonable likelihood that a loan from the industrial development fund will be approved under IC 4-4-8-5, the department shall certify this determination in writing to the fiscal body adopting the ordinance. **For a proposed project described in an ordinance adopted by a unit under section 2 of this chapter after June 30, 2004, the department may not base the preliminary determination referred to in this subsection on any determination made under subsection (b)(2).** Upon this certification the ordinance proposing to establish the economic development district is void.

(d) If the department preliminarily determines under subsection (b) that the proposed project qualifies or will qualify as a qualified industrial development project and that there is a reasonable likelihood that a loan from the industrial development fund will be approved under IC 4-4-8-5, the department shall certify this determination to the fiscal body adopting the ordinance proposing to establish the economic development district. **For a proposed project described in an ordinance adopted by a unit under section 2 of this chapter after June 30, 2004, the department may not base the preliminary determination referred to in this subsection on any determination made under subsection (b)(2).** Upon receipt of this certification the fiscal body shall proceed to take final action with respect to the ordinance in accordance with section 3 of this chapter.

(e) A favorable preliminary certification under subsection (d) does not, however, represent or constitute a final determination by the department and state board of finance as to whether the unit will obtain a loan from the industrial development fund in accordance with IC 4-4-8.

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